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Accountability for the Human Right to Sanitation in South Africa's Informal Settlements:
Strategies of Civil Society Organizations

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ABSTRACT

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Despite South Africa's international and domestic commitments to the right to sanitation, approximately twenty percent of the population did not have access to adequate sanitation as of 2014. As a large portion of this population resides in informal settlements, civil society organizations are attempting to hold the government accountable for the realization of the right to sanitation in these areas. In an attempt to determine if civil society organizations and their employment of various strategies have the ability to accomplish this objective, eight civil society organizations were interviewed about their use of strategies. The empirical evidence revealed specific trends about civil society organizations' use of strategies and the challenges surrounding their objectives, including that civil society organizations are attempting to balance the use of cooperative approaches and adversarial approaches in their employment of strategies. This thesis seeks to expand on theories on how civil society impacts the realization of socio-economic rights, and more significantly, it aims to fill in the gaps in literature on civil society's use of advocacy strategies to hold the government accountable for the right to sanitation. This thesis seeks to contribute to the development of better methods for demanding accountability for this right. Accountability will lead to better realization of the right to sanitation for the informal settlement population in South Africa.

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I. Introduction

The Social Justice Coalition, a social movement of active citizenry, conducted its first social audit of sanitation conditions and services in 2012.¹ The audit observed the conditions of community chemical toilets in the informal settlements of Khayelitsha in Cape Town, South Africa, finding many of the toilets in poor condition or unusable.² The evidence gathered in this audit initiated a larger campaign to hold the government accountable for the realization of the right to sanitation in informal settlements.³ While a lack of government accountability for the realization of this right has long been a contested issue in post-apartheid years, the Social Justice Coalition and several other civil society organizations have revived right to sanitation campaigns in recent years.⁴ These civil society organizations and the continued need for their employment of advocacy strategies for government accountability indicates that South Africa may not be fulfilling its human rights commitments as stipulated in domestic and international law. The successes and failures of these strategies may impact the realization of human rights for approximately 3.3 million individuals residing in informal settlements in South Africa.⁵

This thesis will ask how are civil society actors and their employment of various strategies holding the government accountable for the right to sanitation for South Africa's informal settlement population. It will evaluate the different advocacy strategies civil society actors use to hold the government accountable for realizing the right to

¹ Data gathered in interview with participant from Social Justice Coalition. January 26, 2017.

² Ibid.

³ Social Justice Coalition. "Report of the Khayelitsha 'Mshengu' Toilet Social Audit." *International Budget Partnership*, (2013): 25.

⁴ Steven Robins. "The 2011 Toilet Wars in South Africa: Justice and Transition between the Exceptional and the Everyday after Apartheid." *Development and Change, Special Issue: Transition and Justice: Negotiating the Terms of New Beginnings in Africa* 45.3 (2014): 88.

⁵ Human Development Agency. South African: Informal Settlement Status (2013). *Research Reports*, (2013): 18.

sanitation for South Africans residing in informal settlements, exploring the necessary conditions for these strategies to succeed, and the possibilities of combining strategies.

II. Background

A.) Defining Successful Realization of the Right to Sanitation in Domestic and International Law

Although the *Universal Declaration of Human Rights* does not explicitly mention the right to sanitation, it does proclaim that all people are born “equal in dignity” (art. 1).⁶ It also states, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family...” (art. 22).⁷ The right to sanitation is necessary for the realization of these human rights. In South Africa, both international and domestic laws stipulate the right to sanitation for all people. South Africa ratified the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) in 2015.⁸ Ratification requires progressive realization and non-discriminatory implementation of the rights in this treaty, indicating that state parties must work toward the realization of economic, social, and cultural rights to the maximum of their available resources for all people (art. 2).⁹ The ICESCR includes the rights to an adequate standard of living, health, housing, and improved environmental hygiene (art. 11 and art. 12).¹⁰ South Africa also ratified the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), a treaty that specifically enshrines the right to sanitation.¹¹ Article 14 of

⁶ *Universal Declaration of Human Rights*, (1948).

⁷ *Ibid.*

⁸ United Nations Human Rights Office of the High Commissioner. Status of Ratification Interactive Dashboard. <http://indicators.ohchr.org/>.

⁹ *International Covenant on Economic, Social, and Cultural Rights*, (1976).

¹⁰ *Ibid.*

¹¹ United Nations Human Rights Office of the High Commissioner, *supra* note 8.

CEDAW recognizes that rural women have the right to adequate living conditions, including sanitation (art.14).¹²

The right to sanitation is implicitly required for the realization of the right to an adequate standard of living, right to housing, and right to water as stipulated in the ICESCR. In General Comment No. 4, the Committee on Economic, Social and Cultural Rights specifies that the right to housing includes access to the right to sanitation.¹³ In the *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, UN Special Rapporteur Catarina de Albuquerque defines sanitation “...as a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene.”¹⁴ Furthermore, the realization of the right to sanitation requires the following components: availability, quality, physical accessibility, affordability, and acceptability.¹⁵ While the special rapporteur’s report refrains from specifying a number of toilets to meet the requirement of availability, it states that there, “must be a sufficient number of sanitation facilities (with associated services) within, or in the immediate vicinity, of each household...”¹⁶ The report defines quality as the existence of hygienically and structurally safe sanitation facilities with a supply of materials necessary for sanitation, such as hands soap and menstrual products.¹⁷ The report defines accessibility as physical safe access for all

¹² *Convention on the Elimination of All Forms of Discrimination Against Women*, (1979).

¹³ Committee on Economic, Social and Cultural Rights. *CESCR General Comment No. 4: The Right to Adequate Housing* (Art. 11 (1) of the Covenant). Office of the High Commissioner for Human Rights, UN Doc E/1992/23 (1991): 3.

¹⁴ Human Rights Council. *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, Catarina de Albuquerque. UN Doc A/HRC/12/24 (2009): 20.

¹⁵ Ibid 23-15.

¹⁶ Ibid 23.

¹⁷ Ibid 24.

people, taking into consideration gender, age, and disability.¹⁸ The report explains that affordability indicates that “access to sanitation facilities and services, including construction, emptying and maintenance of facilities, as well as treatment and disposal of fecal matter, must be available at a price that is affordable for all people.”¹⁹ On the final component, acceptability, the report asserts the importance of taking into account the culturally acceptable definitions of privacy and hygiene in constructing and maintaining sanitation facilities.²⁰

The special rapporteur’s report also maintains that states need to include sanitation in national policies and budgets, reflecting the importance of Article 2 of the ICESCR.²¹ Article 2 requires that state parties take steps “...to the maximum of its available resources...” to realize its obligations to human rights.²² This article obliges state parties to respect, protect, and fulfill human rights.²³ State parties must refrain from interfering with individuals’ access to sanitation, provide individuals with a path to remedy violations of the right to sanitation, and take positive action to fulfill the right to sanitation. The ICESCR requires legislators to consider how the state fulfills its human rights obligation when creating policy and issuing budget decisions.²⁴ Even if states have limited resources, states must integrate plans into state policies to progressively realize the rights stipulated in the ICESCR.²⁵

¹⁸ Ibid 24.

¹⁹ Ibid 24.

²⁰ Ibid 25.

²¹ Ibid 26.

²² *International Covenant on Economic, Social, and Cultural Rights*, (1976).

²³ Human Rights Council. *Report of the Special Rapporteur on the human right to safe drinking water and sanitation Common violations of the human rights to water and sanitation*, Catarina de Albuquerque. UN Doc A/HRC/27/55 (2014): 6.

²⁴ Ann Blyberg and Helena Hofbauer. “Article 2 and Governments’ Budgets.” *International Budget Partnership*, (2014): 88.

²⁵ Ibid 6.

The right to sanitation also is ingrained in South Africa's domestic laws. When South Africa drafted its new constitution in 1996, the ICESCR inspired several parts of the Bill of Rights.²⁶ The Bill of Rights in the *Constitution of the Republic of South Africa* states that, "everyone has inherent dignity and the right to have their dignity respected and protected."²⁷ The document also enshrines the rights to health, water, equality, housing, social assistance, security, freedom from violence, and a healthy environment for all people.²⁸ While there is not a direct recognition of the right to sanitation in the document, the realization of the right to sanitation is necessary for the realization of the right to an environment that is not harmful to an individual's health, the right to sufficient water, and the right to security of the person. Additionally, Schedule 4 of the constitution lists sanitation services as part of local government responsibilities.²⁹

The White Paper on Water Supply and Sanitation Policy of 1994 and the National Sanitation Policy of 1996 both further acknowledge government responsibility for sanitation services and provide an initial definition for basic sanitation in South Africa.³⁰ Most prominently, the *Water Services Act* 108 of 1997 specifically states that all South Africans have the right to basic sanitation necessary for safe living conditions.³¹ This act acknowledges the right for residents of informal settlements, and defines basic sanitation as "the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic

²⁶ Sandra Liebenberg "The International Covenant on Economic, Social and Cultural Rights and its Implications for South Africa." *South African Journal on Human Rights* 11.3 (1995): 375.

²⁷ *Constitution of the Republic of South Africa*, (1996).

²⁸ Ibid.

²⁹ Ibid.

³⁰ Kate Tissington. "Basic Sanitation in South Africa: A Guide to Legislation, Policy, and Practice." *Socio-economic Rights Institute of South Africa*, (2011): 21-23.

³¹ *Water Services Act*, (1997).

wastewater and sewage from households, including informal households.”³² Furthermore, the White Paper on Basic Household Sanitation of 2001 and the Revision of the 2001 White Paper on Basic Household Sanitation state that “basic sanitation is a human right,” and specify local government responsibilities for sanitation provisions, especially in informal settlements.³³ On a local level, the *Water Services Act* requires each water service authority to create a water services development plan, detailing how each municipality addresses water and sanitation systems within its local policies and budget.³⁴ These plans, however, often do not align with the requirements of ICESCR or support the realization of rights within the constitution, specifically in the distribution of sanitation facilities and best practices for waste removal in informal settlements. For instance, the water services development plan for the eThekweni Metropolitan Municipality, a municipality in the KwaZulu-Natal province, acknowledges the need for improved sanitation access in informal settlements, but the plan proposes increasing the number of communal toilet blocks and community ventilated improved pit toilets (VIP latrines).³⁵ This varies from the UN Special Rapporteur’s emphasis that the right to sanitation includes access “...within, or in the immediate vicinity, of each household.”³⁶ It also hinders the realization of many of the rights stipulated in South Africa’s constitution.³⁷

³² Ibid.

³³ Tissington, *supra* note 30, at 33-37.

³⁴ *Water Services Act*, (1997).

³⁵ eThekweni Municipality. *Water Services Development Plan*, (2011).

³⁶ Human Rights Council, *supra* note 14, at 23.

³⁷ As discussed previously, the realization of the right to sanitation is implicitly required for the realization of the right to an environment that is not harmful to an individual’s health, the right to sufficient water, and the right to security of the person.

Furthermore, the South African courts have issued two significant rulings in cases related to the right to sanitation for residents of informal settlements.³⁸ In the 2009 case of *Johnson Matotoba Nokotyana and Others v Ekurhuleni Metropolitan Municipality & Others*, residents of an informal settlement alleged a violation of their right to adequate housing.³⁹ The applicants sought relief in the form of allocation of one VIP latrine per household and the installation of high mast lighting.⁴⁰ While the High Court ordered the municipality to provide potable water and refuse collection services, it did not honor residents' requests for VIP latrines and lighting.⁴¹ The Constitutional Court refused to evaluate the case on the requirement of reasonableness because the municipality had not made a decision regarding the in situ upgrade status of the informal settlement, meaning whether or not the informal settlement would be eradicated or upgraded with access to basic services.⁴² In the 2011 case of *Ntombentsha Beja and Others v Premier of the Western Cape and Others*, a 76-year-old female resident of Makhaza, a section of Silvertown, Khayelitsha in Cape Town, was stabbed after using an unenclosed outdoor toilet at night.⁴³ As a result of this incident, Beja and other residents of the township decided to take action against the city for installing toilets without enclosures, alleging

³⁸ Other South African court cases related to the right to sanitation include: *Mazibuko v City of Johannesburg* (2009), *Mnisi and Others v City of Johannesburg* (2009), *Mtungwa and Others v Ekurhuleni Metropolitan* (2011) *City of Cape Town vs. Strümpher* (2012), *Mbatha and Others v City of Johannesburg Metropolitan Municipality and Others* (2014), *Boshielo West and Others v Sekhukhune District Municipality and Another* (2015), and *City of Cape Town v Strümpher* (2012). Additionally, as discussed in this thesis' empirical evidence section, there currently are other cases related to the right to sanitation pending, including *Social Justice Coalition & Others v City of Cape Town*.

³⁹ *Johnson Matotoba Nokotyana and Others v Ekurhuleni Metropolitan Municipality & Others*. Constitutional Court of South Africa, (2009). *Southern Africa Legal Information Institute*: 2.

⁴⁰ *Ibid* 3.

⁴¹ *Ibid* 7.

⁴² *Ibid* 21.

⁴³ *Beja and Others v Premier of the Western Cape and Others*. West African Cape High Court, Cape Town. (2011). *Southern Africa Legal Information Institute*: 12.

violations of their rights to adequate housing, a healthy environment, and privacy.⁴⁴ The High Court ruled that the city had violated the residents' rights, and ordered the city to build enclosures around the toilets.⁴⁵ Furthermore, the court emphasized the importance of community participation in development planning to incorporate stakeholders' opinions as well as to improve relationships between government officials and community members.⁴⁶ The judgments in these cases only slightly improved upon the government's definition of successful realization of the right to sanitation.

B.) Historical Context of the Right to Sanitation in South Africa

Despite South Africa's international and domestic commitments to the right to sanitation, as of 2014, according to the South African Human Rights Commission, approximately twenty percent of the population did not have access to adequate sanitation.⁴⁷ Statistics on access to sanitation in South Africa, however, are considered unreliable due to difficulties in ascertaining the accessibility and function level of sanitation facilities.⁴⁸ This approximate twenty percent of the population often reside in informal settlements and townships, reflecting the spatial inequality created during apartheid.⁴⁹ While definitions of informal settlements vary, the United Nations Conference on Housing and Sustainable Urban Development of 2015 defines them as areas with dwellings ranging from the "simplest shack to permanent structures" and

⁴⁴ Ibid 5.

⁴⁵ Ibid 73.

⁴⁶ Ibid 29.

⁴⁷ South Africa Human Rights Commission. "Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa." *South Africa Human Rights Commission*, (2014): 40.

⁴⁸ Tissington, *supra* note 30, at 59.

⁴⁹ South African Human Rights Commission, *supra* note 47, at 14.

describes the residents of these areas as exposed to “key inequality factors,” subject to a lack of basic services and insecure tenure.⁵⁰

Under the apartheid policies developed in the mid 1900s, the South African government physically separated races. Act Number 41 of 1950, the *Group Areas Act*, created “the establishment of groups areas,” defining “group areas” as sections of land for particular groups (act 41).⁵¹ This act forced black, colored, and Indian South Africans to move to existing townships or new townships, known as Bantustans, race specific housing in rural areas.⁵² Among many other human right issues, this physical separation led to a decrease in adequate sanitation access for these races due to overcrowding and relocation to rural areas.⁵³ When apartheid was abolished in 1994, many South Africans remained confined to these areas or moved to informal settlements to wait for apartheid reparations via Reconstruction Development Programme (RDP) housing.⁵⁴ As of 2012, the Housing Development Agency reported a shortage of RDP Housing, resulting in informal settlements becoming permanent residences for many families.⁵⁵ Informal settlement residents without access to adequate sanitation rely on pit latrines and temporary sanitation facilities, such as chemical toilets.⁵⁶ In some areas, even temporary facilities remain absent or unusable, and individuals must practice open defecation or utilize the hand bucket toilet system, defecating in portable buckets.⁵⁷

⁵⁰ United Nations Conference on Housing and Sustainable Urban Development. “22- Informal Settlements.” *Habitat III Issue Papers*, (2015): 47.

⁵¹ *Group Areas Act*, (1950).

⁵² Philip, Kate. Introduction: A History of Townships in South Africa. *Economics of South African Townships: Special Focus on Diepsloot*. By Sandeep Mahajan. (World Bank Group, 2014): 35.

⁵³ Ibid.

⁵⁴ The Housing Development Agency. “South Africa: Informal Settlement Status.” *Research Reports: Research Series Published by The Housing Development Agency*, (2012). 47

⁵⁵ Ibid 44.

⁵⁶ South Africa Human Rights Commission, *supra* note 47, at 30.

⁵⁷ Ibid 39.

As sanitation still is considered a taboo subject, the right to sanitation receives less attention than other human rights in policy, funding, and strategic planning.⁵⁸ Government officials and representatives of civil society organizations often feel uncomfortable discussing sanitation issues.⁵⁹ This results in a lack of awareness surrounding inadequate sanitation, and a lack of attempts to achieve the realization of the right to sanitation.⁶⁰ While the South African government has instituted programs in response to the sanitation conditions in informal settlements, it has failed to meet the targets of these programs. The South African government implemented the *National Sanitation Strategy* of 2005 in an attempt to respond to the sanitation needs of South Africans, and clarify discrepancies surrounding government responsibilities for sanitation by 2010.⁶¹ The *Free Basic Sanitation Implementation Strategy* of 2009 attempted to secure basic sanitation by 2014 via its focus on municipality responsibility for sanitation access, especially in impoverished areas and informal settlements.⁶²

While these programs have led to the percentage of South Africans without access to sanitation dropping from 51 percent during the apartheid era to approximately 20 percent in 2016, the objectives of these strategies have not been met within the specified time frames.⁶³ The Department of Water and Sanitation in South Africa also created the Bucket Eradication Programme to eliminate the toilet bucket system throughout South

⁵⁸ Inga Winkler, "The Human Right to Sanitation." *University of Pennsylvania Journal of International Law* 37.4, (2016): 1347-1348.

⁵⁹ Louise Emilia Dellström Rosenquist, "A Psychosocial Analysis of the Human-Sanitation nexus." *Journal of Environmental Psychology* 25.3, (2005): 336.

⁶⁰ Ibid.

⁶¹ *National Sanitation Strategy*, (2005).

⁶² Tissington, *supra* note 30, at 41.

⁶³ Langford, Malcolm, Cousins, Ben, Dugard, Jackie, & Madlingozi, Tshepo. *Socioeconomic Rights in South Africa: Symbols or Substance?*, (Cambridge University Press, 2014): 10.

Africa by 2007.⁶⁴ While the program did eradicate the use of the system in certain areas, the government acknowledged that in 2016 the program had not accomplished its objective due to challenges with costs and town planning.⁶⁵

The right to sanitation has become highly politicized in South Africa. Politicians often use improving access to sanitation in informal settlements as a campaigning topic during elections.⁶⁶ Many South Africans with inadequate access to sanitation have protested the corruption and lack of government participation surrounding sanitation services.⁶⁷ Political campaigns and protests focused on sanitation access have increased media attention on the issue.⁶⁸ In response to this attention, the government often focuses on meeting target goals, such as the number of toilets installed in an area, rather than the sustainability and impact of the target goal.⁶⁹ The installed toilets, however, often are not acceptable for use, and therefore, meeting these targets does not result in the realization of the right to sanitation.⁷⁰

As the right to sanitation is not specifically listed as a right in the Constitution of South Africa, Serges Djoyou Kamga argues that to receive the same recognition and attention as other rights, the constitution needs to recognize it as an individual right, rather than a component of the rights previously stated in the document.⁷¹ Constitutional recognition serves as a symbol of recognizing past injustices surrounding access to

⁶⁴ Water Affairs and Forestry Portfolio Committee. “Bucket Eradication Programme & Access to Water Targets: Progress Briefings.” *Parliamentary Monitoring Group*, 2007.

⁶⁵ Ratau Sputnik, “Water and Sanitation on Bucket Eradication Programme.” *South African Government*, (2016).

⁶⁶ Tissington, *supra* note 30, at 15.

⁶⁷ *Ibid* 10.

⁶⁸ *Ibid* 15.

⁶⁹ *Ibid* 59.

⁷⁰ *Ibid* 59.

⁷¹ Serges Djoyou Kamga, “The Right to Sanitation: A Human Right in Need of Constitutional Guarantee in South Africa.” *South African Journal on Human Rights* 29, (2013): 625.

sanitation, and creates additional routes for holding the government accountable for its obligations to the right to sanitation.⁷² Kamga also argues that the right to sanitation must be framed as a form of justice and dignity restoration.⁷³ As apartheid policies denied dignity to many South Africans, the realization of rights associated with dignity, such as the right to sanitation, are necessary for justice in post-apartheid South Africa.⁷⁴

Furthermore, Kerri Ellis and Loretta Feris argue the importance of separating the right to sanitation from other human rights, especially the right to water in law and policy.⁷⁵ As sanitation systems physically do not need to be linked with water systems, the two rights do not need to be protected under the same law.⁷⁶ Ellis and Feris observe that despite recent efforts in South Africa to create separate policies, the initial grouping of the two rights in the *Water Services Act*, an act that primarily focuses on realizing the right to water, continues to impact the realization of the right to sanitation negatively.⁷⁷

The sanitation conditions in informal settlements, the government's failure to meet program objectives, and the political atmosphere surrounding sanitation illustrate a need for greater government accountability for the right to sanitation for residents of informal settlements. As civil society organizations attempt to hold the government accountable through the use of advocacy strategies, these conditions impact their level of success in achieving the realization of the right to sanitation for residents of informal settlements.

⁷² Ibid 626.

⁷³ Ibid 625.

⁷⁴ Ibid.

⁷⁵ Keri Ellis & Loretta Feris, "The Right to Sanitation: Time to Delink from the Right to Water." *Human Rights Quarterly* 36.3, (2014): 609.

⁷⁶ Ibid.

⁷⁷ Ibid 624.

C.) Objective & Significance of this Thesis

Against this background, the objective of this thesis is to answer the following questions: How are civil society actors holding the government accountable for the realization of the right to sanitation for residents of South Africa's informal settlements? What advocacy strategies do civil society actors utilize? What are the trade-offs between different strategies? How can these strategies be combined for the realization of the right to sanitation? What circumstances lead to successful use of these strategies? What are the success factors?

This thesis will attempt to understand why and how civil society actors use different advocacy strategies to hold the government accountable to achieve the realization of the right to sanitation in South Africa's informal settlements. It will attempt to determine if civil society organizations and their employment of various strategies are successful in doing so. Additionally, it will seek to understand what conditions are necessary for an individual strategy or a combined set of strategies to achieve government accountability for the realization of the right to sanitation successfully. This thesis will assess the success of strategies based on how the civil society organizations define successful realization of the right to sanitation, while taking into consideration international and national definitions of successful realization of the right to sanitation.

Existing literature on achieving the realization of this specific right remains incomplete. This thesis' examination of strategies hopes to expand current theories on how the realization of the right to sanitation can be achieved in South Africa. In comparison to existing literature that discusses civil society's use of strategies to hold the South African government accountable to achieve the realization of socio-economic

rights in general, this thesis will focus specifically on the strategies used to hold the government accountable for the realization of the right to sanitation, exploring the particular challenges in the context of sanitation that might distinguish it from other rights. This thesis seeks to expand on theories on how civil society impacts the realization of socio-economic rights, and more significantly, it aims to fill in the gaps in literature on civil society's use of advocacy strategies to hold the government accountable for the right to sanitation. This thesis will contribute to the development of better methods for demanding accountability for this right in the future. Accountability will lead to better realization of the right to sanitation for the informal settlement population in South Africa.

D.) Methodology

In an attempt to answer the questions stipulated in the objective, research was conducted on civil society's use of strategies to hold the government accountable for the realization of the right to sanitation in South Africa. With the aim of including a wide range of civil society actors involved in this advocacy work, online searches for court documents, case studies, and media on the right to sanitation in South Africa were conducted to identify organizations utilizing a variety of advocacy strategies to hold the government accountable for the realization of the right to sanitation. These searches revealed the names of organizations to contact for this thesis' research. The actors contacted included individuals from civil society organizations in Johannesburg, Durban, and Cape Town, the three largest cities in South Africa with significant informal settlements. Based on current involvement in pursuing this objective and the organizations' agreement to participate in the research, the selection of organizations for

this research included: Abahlali baseMjondolo, Planact, Social Justice Coalition, Socio-Economic Rights Institute, Center for Applied Legal Studies, International Budget Partnership, Equal Education, and Section 27. The online searches did reveal the names of additional civil society organizations utilizing strategies to hold the government accountable for the realization of the right to sanitation in South Africa's informal settlements. These organizations, however, did not consent to be part of this thesis' research due to pending litigation, or a lack of focus on this specific initiative at the time of the data collection.

As this thesis focuses on advocacy strategies to hold the South African government accountable for the realization of the right to sanitation in informal settlements, the empirical analysis will focus mainly on the initial six organizations listed, as these organizations utilize strategies in informal settlements. Due to the similarity in their use of strategies and populations represented, this thesis also included two organizations, Equal Education and Section 27, working to realize the right to sanitation in South Africa's schools. All of the participating organizations have utilized strategies, or aided other organizations in utilizing strategies to hold the South African government accountable for the realization of the right to sanitation.

For the purpose of gathering data from these organizations, representatives of these organizations participated in semi-structured interviews. This method, rather than structured interviews or surveys, gave the participants an opportunity to explain their organization's unique role in utilizing strategies as well as varying types of strategies. Participants were asked to elaborate on their organization's use of specific strategies as well as experience with specific regions or populations. As the organizations' initial

engagement with advocacy strategies surrounding the right to sanitation varies, the interview questions allowed the participants to discuss the organizations' use of strategies over an undefined period of time in post-apartheid years. The participants mainly focused on the use of strategies from 2007 to 2017. The semi-structured interview format allowed for the data collection method to be relative to each civil society organization's work. Alternatively, the main limitation in using this method to gather information is that it relied solely on the views of representatives from civil society organizations. This method did not incorporate the views of stakeholders beyond the civil society organizations, such as government officials, the South African Human Rights Commission, and bipartisan actors, on whether or not civil society organizations' advocacy strategies were successful in holding the government accountable for the realization of the right to sanitation. This method also did not collect objective data on change in access to sanitation in informal settlements following the organizations' use of advocacy strategies.

In the interviews, participants were asked to describe strategies attempted, the successes and failures of these individual strategies, the conditions under which these outcomes occurred, and the possibilities of combined strategies. While the interviews did not provide definite answers to all of the proposed questions, they did reveal patterns in how specific combinations of strategies lead to greater successes or failures in the realization of the right to sanitation for informal settlement residents as well as how specific combinations of strategies do or do not lead to government accountability for this realization. These findings will be discussed in the forthcoming sections.

E.) Outline of Thesis

First, this thesis will discuss theories on how civil society holds the State accountable for the realization of human rights, elaborating further on the theoretical framework adopted in this thesis. This section also will include an overview of current literature on strategies to hold states accountable for the realization of socio-economic rights demonstrating the application of the theory in existing case studies. Then, this thesis will analyze the evidence gathered in the semi-structured interviews with the participants from civil society organizations in South Africa. This analysis will be followed by a discussion of key findings and challenges revealed in the evidence. This thesis will discuss the evidence gathered in the interviews within the context of the adopted theoretical framework as well as how the strategies compare to the previous case studies on holding the government accountable for the realization of socio-economic rights. Finally, based on this analysis, it will present recommendations and conclusions.

III. Theoretical Framework and Literature Review

A.) Theories on Explaining the Realization of Socio-economic Rights

As this thesis will attempt to determine the necessary conditions and utilization of advocacy strategies for civil society to hold the South African government accountable for the realization of the right to sanitation, this section will review existing theories on how to explain and assess civil society's use of advocacy strategies. This section will provide an overview of theories, and the following section will provide a more thorough examination of the one adapted as a theoretical framework.

Foremost, certain theories concentrate on assessing the role of justice systems in holding government accountable for the realization of socio-economic rights. For

instance, Varun Gauri and Daniel M. Brinks argue that a four-stage process results in policy legalization.⁷⁸ The four stages include “...the decision to press a claim, a judicial decision, the response or compliance decision by target of the claim, and responses by either the original or new claimant to the new policy environment.”⁷⁹ Additionally, it has the potential to determine the conditions and involvement of actors necessary for policy legalization to contribute effectively to the realization of socio-economic rights.⁸⁰ In an attempt to determine the extent of how policy legalization affects compliance, Malcolm Langford et al. expand on this theory, asserting that how civil society interprets court judgments contributes significantly to the realization of socio-economic rights.⁸¹

Other theories focus on assessing the role of budget analysis. Eitan Felner argues that for progressive realization of socio-economic rights, civil society needs to utilize tools to assess if states are realizing rights with “the maximum of a state’s available resources” as ratification of the ICESR requires.⁸² Felner argues that if civil society does not utilize this methodology, states will use a lack of available resources as an excuse for their failure to fulfill socio-economic rights.⁸³ Felner discusses how budgetary analysis allows organizations to challenge the government as to why and how resources are being allocated.⁸⁴

⁷⁸ Varun Gauri & Daniel M. Brinks. *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, 1st Edition. (Cambridge University Press, 2010). 6.

⁷⁹ Ibid.

⁸⁰ Ibid 4.

⁸¹ Malcolm Langford, César Rodríguez-Garavito, and Julieta Rossi. *Social Rights Judgments and the Politics of Compliance: Making It Stick*, 1st Edition. Cambridge University Press, (2017): 8.

⁸² Eitan Felner. “Closing the ‘Escape Hatch’: A Toolkit to Monitor the Progressive Realization of Economic, Social, and Cultural Rights.” *Journal of Human Rights Practice* 1.3, (2009): 427.

⁸³ Ibid.

⁸⁴ Ibid 428.

In another theory, Daniel P. L. Chong explores a social context of all human rights.⁸⁵ Chong discerns that civil society actors promote or frame human rights in specific ways in response to existing ideas, as a means of appealing to the public.⁸⁶ This theory acknowledges that multiple aspects, such as existing ideas, political context, and variables surrounding legalization, contribute to how civil society attempts to hold government accountable for the realization of rights.⁸⁷

In an attempt to explain the impact of transnational relationships of civil society on holding governments accountable for the realization of all human rights, Thomas Risse and Kathryn Sikkink's multistage spiral model emphasizes five distinct phases of social transformation between civil society, non-compliant states, and international actors—repression, denial, tactical concessions, prescriptive status, and rule-consistent behavior.⁸⁸ Furthermore, Risse, Ropp, and Sikkink's expansion of the spiral model accounts for the gaps between state commitment and state compliance.⁸⁹ The spiral model indicates that relationships between states and global civil society greatly impact how states fulfill human rights commitments.⁹⁰ In another theoretical model centered on global civil society, Emilie M. Hafner-Burton and Kiyoteru Tsutsui assess the impact of INGOs on domestic government accountability for all human rights.⁹¹ Hafner-Burton and

⁸⁵ Daniel P.L. Chong. *Freedom from Poverty*. (University of Pennsylvania Press, 2011). 19.

⁸⁶ Ibid 21.

⁸⁷ Ibid.

⁸⁸ Thomas Risse, Stephen C. Ropp, Kathryn Sikkink. *The Persistent Power of Human Rights From Commitment to Compliance*. Cambridge University Press, (2013): 4.

⁸⁹ Ibid 20.

⁹⁰ Ibid 4.

⁹¹ Emilie M. Hafner-Burton & Kiyoteru Tsutsui. "Human Rights in a Globalizing World." *American Journal of Sociology* 110.5, (2005). 1386

Tsutsui argue “linkage to international civil society has had a positive effect on states’ human rights behavior, decreasing repression.”⁹²

In a more thorough analysis of civil society’s role in human rights realization, LaDawn Haglund and Rimjhim Aggarwal developed a framework to assess the functions of multiple actors, domestic and international, as well as multiple advocacy strategies in demanding accountability. Haglund and Aggarwal developed the mechanisms, actors, and pathways framework, also known as the “MAPs framework”, to assess the relationships between these three components.⁹³ Haglund and Aggarwal argue that an analysis of the relationships between the three components has the potential to reveal the conditions necessary for rights realization.⁹⁴ In this framework, actors represent the individuals and groups employing strategies, and mechanisms represent the types of strategies and conditions that impact the success of these strategies.⁹⁵ Furthermore, pathways represent how change occurs when actors utilize mechanisms.⁹⁶ Haglund and Aggarwal claim that while “...these accountability relations do not explain norm translation, they orient us to the pathways by which norms can be translated to practices and draw our attention to the relevant actors and mechanisms indicated by different accountability processes.”⁹⁷ The MAPs framework seeks to explain how civil society holds the government accountable for the realization of human rights through a variety of advocacy strategies employed by various domestic and international actors.⁹⁸

⁹² Ibid 1389.

⁹³ LaDawn Haglund and Rimjhim Aggarwal “Test of Our Progress: The Translation of Economic and Social Rights Norms Into Practice.” *Journals of Human Rights* 10:4, (2011): 495.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid 504.

⁹⁸ Ibid 505.

B.) Haglund and Aggarwal's Mechanisms, Actors, and Pathways Theory

Haglund and Aggarwal's MAPs framework attempts to understand the relationships necessary for government accountability for the realization of rights. As this framework is most applicable for this thesis' examination of socio-economic rights and domestic advocacy work involving the pertinent role of domestic actors, this thesis will adopt it as a theoretical framework. Haglund and Aggarwal focus on the importance of holding the powerful accountable for the realization of socio-economic rights, and analyze the relationships that allow for this to occur.⁹⁹ Therefore, the MAPs framework seeks to understand the conditions and relationships necessary to hold government accountable for the realization of rights.¹⁰⁰ It identifies several accountability relationships between civil society and government, as well as domestic and international governing bodies.¹⁰¹ This thesis primarily observes two specific accountability relationships from this framework in its empirical analysis: the "informal societal" in which civil society organizations use various mechanisms to demand domestic accountability and the "vertical informal" in which international NGOs along with civil society groups use various mechanisms to demand domestic government accountability.¹⁰²

This thesis also will draw from the MAPs framework's categorization of strategies into various mechanisms utilized in these relationships. The MAPs framework divides mechanisms (types of strategies) into five categories: informational, symbolic,

⁹⁹ Ibid 495.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid 503-504. (Haglund and Aggarwal identify additional accountability relationships in the MAPs framework. These relations, however, do not apply to this thesis' analysis of civil society organizations' use of strategies to hold the South African government accountable for the realization of the right to sanitation in informal settlements.)

cooperative, power-based, and legal.¹⁰³ Informational mechanisms include strategies that strive to share facts and data with the public to strengthen rights-based arguments while symbolic mechanisms include strategies that frame issues in a specific way to encourage the public to support an opinion.¹⁰⁴ Cooperative mechanisms denote strategies that use participatory approaches, mediating between civil society and the government.¹⁰⁵ Power-based mechanisms include strategies that utilize influential actors, such as other governments or powerful companies, to pressure others to respect human rights, and finally, legal mechanisms signify strategies that use the court system to secure human rights.¹⁰⁶

Furthermore, this thesis also will draw from Haglund and Aggarwal's discussion of external factors that impact the process of rights realization. The MAP's framework categorizes these factors into three categories: situational, action-formation, and transformational.¹⁰⁷ Situational includes both factors that prevent and encourage the realization of socio-economic rights, such as historical undertones or an acceptance of rights legitimacy.¹⁰⁸ Action-formation, the main category discussed in this thesis, includes the external factors that allow or do not allow civil society to utilize systems to hold the government accountable for rights realization, such as limited resources.¹⁰⁹ Transformational includes factors that seek to reform existing perceptions of rights realization, such as international pressure.¹¹⁰

¹⁰³ LaDawn Haglund & Robin Stryker. *Closing the Rights Gap: From Human Rights to Social Transformation*, (California University Press, 2015): 6.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Haglund & Stryker 6.

¹⁰⁷ Haglund & Aggarwal, *supra* note 93, at 497.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid 498.

¹¹⁰ Ibid 501.

In each relationship, how the actors, both civil society organizations and its government counterparts, respond to mechanisms combined with the impact of external factors determines the pathways to rights realization. As Haglund and Aggarwal's explanation demonstrates the significance of relationships between various factors in achieving the realization of human rights, this framework will contribute greatly to this thesis' analysis of civil society's use of advocacy strategies to realize the right to sanitation in South Africa's informal settlements.

C.) Literature Review on Application of Theory: Civil Society's Use of Strategies to Hold the Government Accountable for the Realization of Socio-economic Rights

This section will focus on the application of the theories, discussing several case studies on civil society's attempts to hold the government accountable for the realization of various socio-economic rights in South Africa. As current literature examines several past social movements to consider such attempts, these cases studies demonstrate the successes and failures of civil society engagement with a variety of strategies. This section's discussion will aid in this thesis' analysis of civil society's attempts to hold the government accountable for the realization of the specific right to sanitation in South Africa.

Kristina Betley and Richard Calland analyze the use of education, a strategy categorized as both an informational mechanism and a cooperative mechanism, in achieving the realization of socio-economic rights in South Africa.¹¹¹ Betley and Calland observe that when civil society educates communities about human rights, individuals use this information to meet with government officials and develop policy to achieve the

¹¹¹ Kristina Betley & Richard Calland, *Post-Apartheid Social Movements and Legal Mobilisation*. Ed. Langford, Malcolm, Cousins, Ben, Dugard, Jackie, & Madlingozi, Tshepo. *Socioeconomic Rights in South Africa: Symbols or Substance?*, (Cambridge University Press, 2014): 342.

realization of socio-economic rights.¹¹² Other case studies indicate that information about government policies or budgets also may provide civil society with the necessary tools to hold the government accountable for its rights commitments. For instance, in a case study on attempts to achieve the realization of human rights in India, Gahlot Sushmita observes the power of information gathered in social audits, a process of gathering and comparing information on government plans and actual services provided..¹¹³ Sushmita surmises that social audits work as an effective strategy because the information gathered represents both the interests of the impacted beneficiaries and government.¹¹⁴

In an analysis of civil society's use of power-based and legal mechanisms, Tshepo Madlingozi demonstrates how Abahlali baseMjondolo, one of the civil society organizations included in this thesis' field research, used both political pressure within the African National Congress party and litigation to achieve the realization of housing rights for South Africans in informal settlements.¹¹⁵ Madlingozi's analysis demonstrates the impact of these two specific mechanisms in holding the South African government account for the realization of socio-economic rights.

In Sandra Liebenberg's discussion of socio-economic right as justiciable rights in South Africa, she explains that the transformative constitution "...aims to facilitate the transformation of society by setting right the wrongs of the past."¹¹⁶ Several case studies demonstrate that civil society often uses this approach towards the constitution via

¹¹² Ibid.

¹¹³ Gahlot Sushmita, "Social Audits in India." *International Research Journal of Social Sciences* 2.11, (2013): 43.

¹¹⁴ Ibid.

¹¹⁵ Tshepo Madlingozi, *Post-Apartheid Social Movements and Legal Mobilisation*. Ed. Langford, Malcolm, Cousins, Ben, Dugard, Jackie, & Madlingozi, Tshepo. *Socioeconomic Rights in South Africa: Symbols or Substance?*, (Cambridge University Press, 2014): 94.

¹¹⁶ Sandra Liebenberg. *Socio-Economic Rights Adjudication Under a Transformative Constitution*. (Juta & Co. Ltd, 2010): 24-25.

litigation, noting the limits and possibilities of employing strategies categorized as legal mechanisms.¹¹⁷ In examining civil society's use of litigation to "right the wrongs," Liebenberg describes the limitations of litigation in holding the government accountable for the realization of socio-economic rights. The reasonableness test, established in the case of *Government of the Republic of South Africa and Others v Grootboom and Others*, often does not allow impoverished individuals to hold the government accountable for a lack of fulfillment of socio-economic rights.¹¹⁸ Jackie Dugard furthers this argument in her discussion of the limitations of litigation as a strategy, observing that courts often issue conservative rulings based on the reasonableness approach.¹¹⁹

Siri Gloppen's analysis on the role of litigation in securing socio-economic rights acknowledges similar limitations of litigation as a strategy, but does note that litigation may be a successful strategy under specific conditions. Gloppen suggests that litigation influences the realization of rights when it holds the government accountable for policy gaps or implementation gaps.¹²⁰ In a similar observation of litigation, Lillian Chenwi notes that despite its flaws, the standard of reasonableness may lead to progressive socio-economic rights decisions in the future because it may be widely interpreted by the court due to its broad definition.¹²¹ Furthermore, Varun Gauri and Daniel M. Brinks argue that litigation may contribute to the protection of the economic and social rights of poor

¹¹⁷ Ibid.

¹¹⁸ Sandra Liebenberg, "South Africa: Adjudicating social rights under a transformative Constitution." *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, By Malcolm Langford. Cambridge, (Cambridge University Press, 2008): 80.

¹¹⁹ Jackie Dugard, "Judging the Judges: Towards an Appropriate Role for the Judiciary in South Africa's Transformation." *Leiden Journal of International Law* 20, (2007): 973.

¹²⁰ Siri Gloppen, "Litigation as a strategy to hold governments accountable for implementing the right to health." *Health and Human Rights Journal* 10.2, (2008): 5.

¹²¹ Lillian Chenwi. "Socio-economic Gains and Losses: The South African Constitutional Court and Social Change." *SAGE Journals*, (2011): 438.

communities when it also benefits the organized public of a state in its entirety.¹²² Gauri and Brinks suggest that if civil society frames rights realization as a public good for all South Africans, litigation may be a successful strategy holding the government accountable.¹²³

Heinz Klug observes that the most successful movements in post-apartheid South Africa have "...adopted a multilayered strategy of appeals to government, public mobilization, and diverse legal strategies."¹²⁴ In examining a specific socio-economic rights campaign, Klug concludes that a combination of strategies led to the success of the Treatment Action Campaign (TAC) in its movement to hold the government accountable for the right to health, creating public sector access to anti-retrovirals and treatment to prevent mother-to-child transmission of HIV/AIDS. In his analysis, Klug first refers to the successful use of litigation as a strategy in *Minister of Health v TAC*. Subsequently, he praises the campaign's framing of the movement as an African National Congress loyalty issue that impacted voting.¹²⁵ Lastly, Klug demonstrates that cooperation with the government contributed as a final effective strategy as the TAC committed to aiding in government rollout of the anti-retroviral treatment in the public sector.¹²⁶

The use of multiple types of strategies to hold the government accountable for socio-economic rights also has been observed in other states. For instance, Shareen Hertel has analyzed the importance of combining strategies for holding the government

¹²² Varun Gauri and Daniel M. Brinks. "The Impact of Legal Strategies for Claiming Economic and Social Rights." Ed. La Dawn Haglund and Robin Stryker, *Closing the Rights Gap: From Human Rights to Social Transformation*, (California University Press, 2015): 95.

¹²³ Ibid.

¹²⁴ Klug Heinz, "Achieving the Rights to Land, Water, and Health in Post-Apartheid South Africa." Ed. LaDawn Haglund & Robin Stryker. *Closing the Rights Gap: From Human Rights to Social Transformation*, (California University Press, 2015): 199.

¹²⁵ Ibid.

¹²⁶ Ibid 200.

accountable for the right to food in India.¹²⁷ Hertel concludes a combination of strategies categorized as informational, cooperative, and legal mechanisms contributed to the successful aspects of the right to food campaign. These strategies included educating the public about the right to food, public demonstrations, hearings with beneficiaries and government officials, and litigation.¹²⁸ Hertel, however, does note the trade-offs in combining strategies in that civil society actors may employ some unnecessary additional strategies that do not tackle the underlying causes of human rights violations.¹²⁹

This thesis seeks to use this discussion of case studies as a guide for its analysis of empirical evidence, comparing the findings in these studies to its empirical evidence. While there are several case studies focused on the realization of socio-economic rights in South Africa in current literature, empirical analysis on realizing the right to sanitation remains absent. Furthermore, a large portion of existing literature analyzes the limitations of litigation in realizing socio-economic rights, but it does not examine the use of other strategies. These case studies indicate an existing disparity, but do not seek to address it. As these case studies often examine the role of litigation in realizing the right to health, a right that often intersects with the right to sanitation, this thesis' empirical analysis of strategies for holding government accountable for the realization of the right to sanitation offers significant insight into the use of strategies for all human rights with strong public health dimensions.

¹²⁷ Shareen Hertel, "Hungry for Justice: Social Mobilization on the Right to Food in India." *Development and Change* 46.1, (2015): 72-94.

¹²⁸ Ibid 74-88.

¹²⁹ Ibid 89.

IV. Empirical Evidence and Analysis

A) Participating Organizations and their Accountability Relationships

As discussed in the methodology section, this thesis includes a wide range of civil society actors attempting to hold the government accountable for the realization of the right to sanitation in South Africa's informal settlements. This section introduces the organizations, and discusses the organizations' varying backgrounds, capacities to employ advocacy strategies, and objectives. It will discuss the organizations in order of capacity level and self-identification, beginning with a grassroots initiative and concluding with an international non-governmental organization. This section also will analyze the organizations' accountability relationships in the context of Haglund and Aggarwal's MAPs framework as outlined in section III.B.¹³⁰

The first organization, the Abahlali baseMjondolo Movement (AbM), the "shack dwellers" movement, seeks to promote and protect the interests of shack dwellers.¹³¹ The movement does not associate with South Africa's other well-known shack dweller movement, Shack Dweller International (SDI) Alliance, due to SDI's political alignment with the African National Congress (ANC).¹³² AbM started in 2005 when residents of an informal settlement blockaded Kennedy Road in Durban to protest being evicted from their land.¹³³ While the movement primarily works in informal settlements in the KwaZulu-Natal province, the movement has also represented informal settlements in

¹³⁰ Haglund and Aggarwal, *supra* note 93, at 503-504.

¹³¹ Abahlali baseMjondolo. <http://abahlali.org/>.

¹³² Abahlali baseMjondolo. "Neither the March nor the Money are Ours." *Abahlali baseMjondolo Press Release*, (2007).

¹³³ Information gathered in interview with participant from Abahlali baseMjondolo. January 23, 2017.

other regions of South Africa, including the Western Cape.¹³⁴ The movement is attempting to hold local government accountable for the realization of rights to housing and basic services in informal settlements.¹³⁵ AbM strives “...to build democratic people’s power where people live and, to a lesser extent, where people work.”¹³⁶ In its attempts to hold the government accountable for the realization of the right to sanitation in informal settlements, AbM’s objective is to facilitate engagement between informal settlement residents and the government to plan for the upgrading of informal settlements.¹³⁷ These upgrades include the installation of water pipes and sewer systems.¹³⁸

The second organization, Planact, is a local non-governmental development organization, working with disadvantaged communities. The organization, established in 1985, attempts to facilitate participatory planning between informal settlement communities in Johannesburg and local government.¹³⁹ Planact represents several informal settlements and impoverished communities in the Gauteng province, but it has focused on realizing the right to sanitation primarily in the Spring Valley informal settlement and informal settlements in Tembisa.¹⁴⁰ In attempts to hold the government accountable for the realization for the right to sanitation in these settlements, Planact advocates for the upgrading of informal settlements. Planact has endeavored to secure both long-term solutions, such as piping and sewer systems, as well as improvements to

¹³⁴ Steven Robins. “The 2011 Toilet Wars in South Africa: Justice and Transition between the Exceptional and the Everyday after Apartheid.” *Transition and Justice: Negotiating the Terms of New Beginnings in Africa*, First Edition. Ed. Gerhard Anders & Olaf Zenker. (The Institute of Social Studies, 2015): 88.

¹³⁵ Information gathered in interview with participant from Abahlali baseMjondolo. January 23, 2017.

¹³⁶ Abahlali baseMjondolo. “Activists and Churches Seeking a Relationship with the Movement.” *Abahlali baseMjondolo Press Release*, (2007).

¹³⁷ Information gathered in interview with participant from Abahlali baseMjondolo. January 23, 2017.

¹³⁸ Ibid.

¹³⁹ Information gathered in interview with participant from Planact. February 6, 2017.

¹⁴⁰ Ibid.

short-term sanitation facilities, such as an increase in the number of VIP latrines.¹⁴¹ Its mission is to “...improve people’s habitable environment in ways that alleviate poverty.”¹⁴²

The third participating organization, the Social Justice Coalition (SJC) is a local movement of active citizenry that represents communities in Khayelitsha in the Western Cape.¹⁴³ The coalition, established in 2008, seeks to realize constitutional rights for individuals residing in South Africa’s informal settlements through various campaigns on the right to sanitation, the right to protest, the right to justice, and the right to safety.¹⁴⁴ The movement is attempting to “...compel the City of Cape Town to adequately budget and plan for the provision of improved access to sanitation in the City’s informal settlements.”¹⁴⁵ The movement’s objectives include improving temporary sanitation facilities and services as well as creating long-term permanent sanitation access through the upgrading of informal settlements.¹⁴⁶

The fourth organization, the Socio-Economic Rights Institute (SERI), is a national non-profit and public interest legal organization based in Johannesburg.¹⁴⁷ SERI, established in 2008, aids individuals and communities throughout South Africa in holding the government accountable for socio-economic rights guaranteed in the constitution.¹⁴⁸ The institute is attempting to give disadvantaged communities the political space

¹⁴¹ Information gathered in interview with participant from Planact. February 6, 2017. and Planact. “Report on the Spring Valley Social Audit: Water Service Provision by Trucks.” *Planact*, (2016).

¹⁴² Planact “About Planact.” <http://www.planact.org.za/about-us/about-planact/>.

¹⁴³ Information gathered in interview with participant from Social Justice Coalition. January 26, 2017.

¹⁴⁴ Social Justice Coalition. http://www.sjc.org.za/what_we_do.

¹⁴⁵ Ibid.

¹⁴⁶ Information gathered in interview with participant from Social Justice Coalition. January 26, 2017.

¹⁴⁷ Information gathered in interview with participant from Socio-Economic Rights Institute. March 20, 2017.

¹⁴⁸ Socio-Economic Rights Institute. <http://www.seri-sa.org/index.php/what-2/about-seri>.

necessary to advocate for social transformation.¹⁴⁹ In this process, SERI promotes the interests of communities, which often includes advocating for informal settlement upgrading with permanent and long-term access to sanitation.¹⁵⁰

The fifth organization, the Center for Applied Legal Studies (CALS), is another national public interest legal organization, representing communities and individuals throughout South Africa. CALS, established in 1978, has a longer history in advocating for government accountability for human rights than SERI.¹⁵¹ Through one of its initiatives, the Basic Service Program, CALS attempts to achieve government accountability for the realization of the rights to housing and sufficient water.¹⁵² CALS' objectives include advocating for the interests of informal settlement communities, such as increasing access to basic services in informal settlements, as well as advocating for proper allocation of subsidized housing.¹⁵³

The next two organizations, Equal Education and Section 27, are national non-governmental organizations working to hold the government accountable for the realization of the right to sanitation in South Africa's schools. While this thesis focuses on civil society's use of advocacy strategies in informal settlements, it includes these two organizations in the interviews due to their representation of students that reside in informal settlement as well as their use of advocacy strategies similar to those of the other organizations included in the interviews.¹⁵⁴ Equal Education, is a movement of

¹⁴⁹ Ibid.

¹⁵⁰ Information gathered in interview with participant from Socio-Economic Rights Institute. March 20, 2017.

¹⁵¹ Center for Applied Legal Studies. <https://www.wits.ac.za/cals/>.

¹⁵² Ibid.

¹⁵³ Interview with participant from Center for Applied Legal Studies. January 24, 2017.

¹⁵⁴ Information gathered in interviews with participants from Equal Education and Section 27. January 24, 2017.

students and parents.¹⁵⁵ It strives to reduce inequalities in education leftover from apartheid in five provinces throughout South Africa.¹⁵⁶ It represents students from various socio-economic backgrounds, but many of its members reside in informal settlements or townships with limited access to sanitation.¹⁵⁷ Section 27, a health focused organization and public interest law center, focuses on addressing the systems that have failed to afford individuals the rights to health, food, education, and equality.¹⁵⁸ The organization often works with rurally located informal settlements and townships.¹⁵⁹ In 2010, Section 27 decided to address education as a determinant of public health.¹⁶⁰ This initiative seeks to achieve government accountability for the realization of sanitation for students through improving permanent infrastructure in schools, as well as increasing access to materials and maintenance necessary for adequate sanitation facilities.¹⁶¹

The final organization, International Budget Partnership (IBP), is an international non-governmental organization with main branches in three countries: South Africa, India, and Kenya.¹⁶² IBP partners with civil society organizations to improve quality and quantity of service delivery for all basic services.¹⁶³ In this thesis' selection of organizations, IBP has partnered with Planact, SJC, and Equal Education. IBP supports the objectives of these organizations in holding the government accountable for the realization of the right to sanitation through the use of budgetary analysis.¹⁶⁴

¹⁵⁵ Information gathered in interview with participant from Equal Education. January 24, 2017.

¹⁵⁶ Equal Education. <https://equaleducation.org.za/>.

¹⁵⁷ Information gathered in interview with participant from Equal Education. January 24, 2017.

¹⁵⁸ Section 27. <http://section27.org.za/priority-work-areas/>.

¹⁵⁹ Information gathered in interview with participant from Section 27. January 24, 2017.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² International Budget Partnership. <http://www.internationalbudget.org/budget-work-by-country>.

¹⁶³ Information gathered in interview with participant from International Budget Partnership. January 26, 2017.

¹⁶⁴ Ibid.

In referring back to this thesis' theoretical framework to understand civil society's relationships with government, the first seven organizations demonstrate Haglund and Aggarwal's "informal societal" relationship, as domestic organizations demanding domestic government accountability for the realization of human rights.¹⁶⁵ The final organization, IBP, demonstrates Haglund and Aggarwal's "vertical informal" relationship, as it is an international non-governmental organization demanding domestic government accountability for the realization of human rights.¹⁶⁶ This selection of organizations demonstrates that domestic organizations, rather than international organizations, primarily are attempting to hold the government accountable for the realization of the right to sanitation in South Africa.¹⁶⁷ The INGO, IBP, plays a limited role in advocating for the realization of the right to sanitation, primarily providing support and resources for organizations operating domestically.¹⁶⁸ These relationships illustrate the pertinent role of domestic civil society organizations in South Africa in advocating for government accountability for socio-economic rights.¹⁶⁹ The forthcoming discussion of strategies will further demonstrate the difference in these two relationships.

B.) Defining Successful Realization of the Right to Sanitation

Before analysis of civil society's use of strategies, this thesis endeavors to ascertain how to define successful realization of the right to sanitation in South Africa's informal settlements. As discussed earlier in this thesis, current international law and domestic law outline the standards for state fulfillment of the right to sanitation. Local

¹⁶⁵ Haglund and Aggarwal, *supra* note 93, at 503.

¹⁶⁶ *Ibid* 504.

¹⁶⁷ Information gathered in interviews with participants from the eight participating civil society organizations. January 23, 2017 to March 20, 2017.

¹⁶⁸ *Ibid*.

¹⁶⁹ Malcolm Langford, Ben Cousins, Jackie Dugard, & Tshepo Madlingozi, *Socioeconomic Rights in South Africa: Symbols or Substance?*, (Cambridge University Press, 2014): 425.

policy in South Africa's municipalities, however, often does not align with this standard.¹⁷⁰ Additionally, various studies outline specific factors necessary for the realization of the right to sanitation in informal settlements, such as minimizing the number of households sharing sanitation facilities as well as decreasing the distance to sanitation facilities.¹⁷¹ Therefore, before analyzing the success and failure of specific strategies, this thesis attempts to understand how this selection of civil society organizations defines and assesses successful realization of the right to sanitation in informal settlements.

While the previous section alluded to the organizations' general objectives for their advocacy work, the interviews also gathered data on the specifics on these objectives in an attempt to understand how the organizations define success. In the semi-structured interviews, the participants were asked to describe his or her organization's vision of successful realization of the right to sanitation for residents of informal settlements. The participants also were asked to describe if and how the organizations' advocacy strategies to hold the government accountable resulted in unsuccessful, partially successful, or successful realization of the right to sanitation. The responses revealed that the organizations considered their objective to secure successful realization of the right to sanitation in informal settlement to include two components: an acknowledgment of government accountability and implementation of solutions to realize the right to sanitation. When the participants from the organizations described strategies

¹⁷⁰ See section II.A for discussion of international and domestic law on the right to sanitation as well as a discussion of local municipality water services development plans.

¹⁷¹ See studies: Gregg S. Gonsalves, Edward H. Kaplan, and A. David Paltiel. "Reducing Sexual Violence by Increasing the Supply of Toilets in Khayelitsha, South Africa: A Mathematical Model." *PLoS ONE* 10.4 (2015): 4. And Baker KK, O'Reilly CE, Levine MM, Kotloff KL, Nataro JP, Ayers TL, et al. "Sanitation and Hygiene-Specific Risk Factors for Moderate-to Severe Diarrhea in Young Children in the Global Enteric Multicenter Study, 2007–2011: Case-Control Study." *PLoS Med* 13.5 (2016): 6.

as partially successful, they often indicated that only the first component had been achieved, or the implementation of solutions had been achieved in a limited region or unsustainable manner.¹⁷²

The majority of the organizations described the first component of their objective, acknowledgment of accountability, as actions that allowed for the creation of permanent solutions, including participatory planning with communities and budget reform.¹⁷³ The participants from the organizations indicated that their objective is to achieve State allocation of funds towards the improvement of sanitation infrastructure, development of plans with government officials for the upgrading informal settlements, and monitoring of these two aspects.¹⁷⁴ The majority of the organizations described the second component of their objective, implementation of solutions to realize the right to sanitation, as long-term and permanent development with an objective of installing flush toilets in each home.¹⁷⁵ The participants from the organizations indicated that their objective is to achieve the installation of pipes, sewage systems, and flush toilets in informal settlements to realize the right to sanitation successfully.¹⁷⁶ While the organizations indicated that the installation of flush toilets and ground sewer systems are a culturally accepted solution among informal settlement communities, flush toilets require more water and contribute more to the contamination of fresh water than other sanitation systems, and therefore, this sanitation system may not be an environmentally

¹⁷² Information gathered in interviews with participants from the eight participating civil society organizations. January 23, 2017 to March 20, 2017.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

sustainable solution.¹⁷⁷ Thus, the interviews revealed that civil society organizations struggle to balance the standards desired by community members with the best practices to protect the right to a healthy environment when developing organizational objectives.

Furthermore, all of the organizations, with the exception of CALS, rejected Reconstruction Development Housing and relocation of informal settlement residents, as solutions to realizing the right to sanitation.¹⁷⁸ The participant from AbM stated, “Relocation does not account for the community relationships we have here, and does not give people access to the city.”¹⁷⁹ The majority of the participants from the other organizations contended with this sentiment in their interviews. As both the participants from Planact and SERI emphasized, individuals often reside in informal settlements due to their close proximity to places of employment in major cities.¹⁸⁰ Thus, the participants highlighted their organizations’ objective to achieve participatory planning between civil society and government in realizing the right to sanitation as established in *Beja and Others v Premier of the Western Cape and Others*.¹⁸¹ If planning does not include the interests of beneficiaries, it may fail to fulfill the right to sanitation as well as increase violations of other human rights. An inability to access water pipes and sewage systems emphasizes the unequal access to basic services that economically disadvantaged individuals experience in South Africa.¹⁸² When the State only provides relocation as a

¹⁷⁷ United Nations General Assembly. *Human right to safe drinking water and sanitation*, Léo Heller. UN Doc A/70/203 (2015): 13.

¹⁷⁸ Information gathered in interviews with participants from Abahlali baseMjondolo, Planact, SJC, Equal Education, Section 27, SERI, and IBP. January 23, 2017 to March 20, 2017.

¹⁷⁹ Information gathered in interview with participant from Abahlali baseMjondolo. January 23, 2017.

¹⁸⁰ Information gathered in interview with participants from Planact and Socio-Economic Rights Institute. February 6, 2017 and March 20, 2017.

¹⁸¹ *Beja and Others v Premier of the Western Cape and Others*, *supra* note 43, at 29.

¹⁸² United Nations General Assembly. *supra* note 177, at 16.

solution to achieve the realization of the right to sanitation, the experience of inequality is embedded further for these communities.¹⁸³

Conversely, the participant from CALS expressed that the organization considers subsidized housing and relocation as one of several routes to realizing the right to sanitation for residents of informal settlements.¹⁸⁴ CALS pursues this solution for two reasons: the South African government continues to resist upgrading informal settlements, and subsidized housing has the ability to realize the right to all basic services.¹⁸⁵ CALS acknowledges that the installation of permanent sanitation systems with sewer systems and flush toilets in existing informal settlements may not be a feasible solution for all informal settlements. Informal settlements may not have access to sewer systems due to inadequate urban planning.¹⁸⁶ Thus, the State may attempt to avoid the complex planning and expense of expanding access to these systems.¹⁸⁷

C.) Types of Strategies, Benefits, and Tradeoffs

Informational and Symbolic Mechanisms

In this selection of civil society organizations, seven out of eight of the participating organizations utilize strategies within the informational and symbolic mechanism categories of the MAPs framework to hold the government accountable for the realization of the right to sanitation. These organizations include AbM, Planact, SJC, Equal Education, Section 27, SERI, and IBP. The organizations categorized the following strategies as informational: protests, marches, media, surveys, social audits, budget

¹⁸³ Ibid.

¹⁸⁴ Interview with participant from Center for Applied Legal Studies. January 24, 2017.

¹⁸⁵ Ibid.

¹⁸⁶ United Nations General Assembly, *supra* note 177, at 13.

¹⁸⁷ Ibid.

analysis and educational workshops.¹⁸⁸ Some of the strategies, including protests, marches, and media attention, also may be categorized as symbolic mechanisms.¹⁸⁹

The participants from AbM, Planact, SJC, Equal Education, and Section 27 indicated these public displays often serve to educate the community and the general public about right to sanitation issues.¹⁹⁰ Protests and marches also attract media attention and increase public awareness of sanitation issues, garnering support for campaigns to hold the government accountable.¹⁹¹ Often this results in the government creating solutions for temporary access to sanitation facilities or ad hoc improvements for positive media coverage, such as the allocation of more VIP latrines in informal settlements.¹⁹² Therefore, these five organizations indicated that they considered protests and marches to be partially successful in holding the government accountable for the realization of the right to sanitation.¹⁹³ For Planact, Section 27, and Equal Education, protests and marches increased initial communications with government officials, resulting in meetings between community members and the government.¹⁹⁴ This result reflects the findings in Betley and Calland's case study on civil society's use of information to establish government relationships in South Africa, the organizations' use of informational mechanisms often resulted in government officials agreeing to meet with communities to discuss how to realize the right to sanitation.¹⁹⁵ Thus, the use of informational mechanisms may lead to the use of cooperative mechanisms. Conversely, protests and

¹⁸⁸ Information gathered in interviews with participants from the eight participating civil society organizations. January 23, 2017 to March 20, 2017.

¹⁸⁹ Ibid.

¹⁹⁰ Information gathered in interviews with participants from AbM, Planact, SJC, Equal Education, and Section 27. January 23, 2017 to January 26, 2017.

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Betley and Calland, *supra* note 111, at 342.

marches strained the relationships between civil society and the government for some of the organizations, resulting in arrests, violence, or an end to meetings.¹⁹⁶ For AbM and SJC, protests, blockades, and marches negatively impacted the organizations' relationships with the ANC party and local law enforcement.¹⁹⁷ This rise in conflict, however, did attract additional media attention and led to discussions about the right to sanitation in election campaigns.¹⁹⁸

While all the participants from the seven organizations utilizing informational mechanisms expressed the importance of attracting media attention through the use of other strategies, such as protests and marches, some of the organizations also utilize their own sources of media to hold the government accountable for the realization of the right to sanitation. For instance, Planact uses social media to inform the public about sanitation issues as well as attract the attention of government officials.¹⁹⁹ The participant from Planact stated, "Our communications team says the district does see twitter, and this puts pressure on them to give issues attention."²⁰⁰ In response to media attention, the district agreed to meet with Planact on behalf of the Spring Valley informal settlement, a community in need of access to water tanks for drinking and sanitation.²⁰¹ The meeting did not lead to the successful realization of the right to sanitation in Spring Valley, but it did initiate a conversation between the community and government.²⁰² Section 27 also utilizes its own form of media, publishing columns in four newspapers.²⁰³ The

¹⁹⁶ Information gathered in interviews with participants from AbM and SJC. January 23, 2017 to January 26, 2017.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Information gathered in interview with participant from Planact. February 6, 2017.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Information gathered in interview with participant from Section 27. January 26, 2017.

organization publishes articles on human rights and how to advocate for these rights in district meetings.²⁰⁴ Similarly, SERI conducts and publishes its own research on community experiences with accessing the right to sanitation. Both the participants from Section 27 and SERI indicated that distributing media and publications in multiple languages remains the greatest challenge in utilizing this strategy.²⁰⁵ Additionally, the participant from SERI stated, “This strategy alone does not make change.”²⁰⁶

Planact, SJC, and Equal Education utilize a combination of surveys, social audits, and budget analysis to inform informal settlement communities, the general public, and government officials about sanitation issues.²⁰⁷ In conducting surveys and social audits, the organizations asked community members and volunteers to collect information about existing sanitation facilities as well as monitor the implementation of government policies to improve the realization of the right to sanitation.²⁰⁸ Planact conducted social audits in both Spring Valley and the informal settlements of Tembisa to collect information on the amount of water in the communities, the cleanliness of the water, and the conditions of VIP latrines.²⁰⁹ Between 2012 and 2016, SJC conducted five social audits.²¹⁰ The audits collected data on the publicworks program, a program that provided janitorial services for community toilets, as well as data on the conditions of chemical

²⁰⁴ Ibid.

²⁰⁵ Information gathered in interviews with participants from Section 27. and SERI. January 26, 2017 to March 20, 2017.

²⁰⁶ Information gathered in interview with participant from SERI. March 20, 2017.

²⁰⁷ Information gathered in interviews with participants from Planact, SJC, and Equal Education. January 24, 2017 to February 6, 2017.

²⁰⁸ Ibid.

²⁰⁹ Information gathered in interview with participants from Planact. February 6, 2017. and Planact. “Report on the Spring Valley Social Audit: Water Service Provision by Trucks.” *Planact*, (2016).

²¹⁰ Information gathered in interview with participant from SJC. January 26, 2017.

toilets.²¹¹ Following the social audits, IBP helped both Planact and SJC to analyze the municipality's budget.²¹² One participant from SJC stated, "When we went over the budget, we noticed that in terms of service provision, the majority of funds were going to the operating side for temporary sanitation, and very little, only two percent, was towards infrastructure."²¹³ As chemical toilets are more expensive than flush toilets, this allocation of funds concerned SJC.²¹⁴ The social audits successfully uncovered this information, and led to meetings with government officials.²¹⁵ During the meetings, SJC and the municipality agreed upon improvements to address some of the sanitation issues discovered in the audits.²¹⁶ For instance, the audits revealed that janitors hired to clean community toilets, did not have uniforms or cleaning supplies.²¹⁷ The municipality agreed to improve this program, allocating additional funds toward janitorial materials.²¹⁸ The municipality, however, was defensive about larger discrepancies in the audits and budget analysis, such as the allocation of funds towards short-term, rather than long-term solutions.²¹⁹ Thus, SJC did not reach an agreement with government officials in terms of how to reallocate funds in the budget for long-term solutions to realize the right to sanitation in informal settlements.²²⁰

²¹¹ Neil Overy. "The Social Justice Coalition and Access to Basic Sanitation in Informal Settlements in Cape Town, South Africa." *International Budget Partnership* Study No. 11 (2013).

²¹² Information gathered in interviews with participants from Planact and SJC. January 26, 2017 to February 6, 2017.

²¹³ Information gathered in interview with participant from SJC. January 26, 2017.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Information gathered in interview with participant from SJC. January 26, 2017.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

Equal Education also conducted a social audit to assess the conditions of sanitation in schools.²²¹ In 2013, South Africa's Department of Education published a report on the norms and standards of school infrastructure at Equal Education's request.²²² Despite the developing of norms and standards in the report, the audit indicated that sanitation facilities and the maintenance systems in schools remained in poor condition in practice, hence pointing to a lack of implementation of the standards.²²³ Equal Education's meetings with the government about the findings in the social audit eventually led to a one-time budget increase for school infrastructure, but the participant from Equal Education noted that this is not a substantial reform to create long-term realization of the right to sanitation.²²⁴

These examples reflect Sushmita's case study on social audits in India and Felner's discussion of budgetary analysis.²²⁵ However, they also reveal two crucial factors that determine the success of informational strategies. First, whether or not the government is willing to respond to civil society's collected data impacts whether or not this information will lead to cooperative mechanisms, such as meeting with the government. Secondly, how the government envisions successful realization of the right to sanitation impacts whether or not the two parties will reach a solution. Additionally, relationships between government officials and service providers also impact the success of civil society's use of social audits. Despite government promises and allocation of funds to realize the right to sanitation, government-hired service providers may not fulfill their responsibilities. For instance, the participant from Planact explained that the social

²²¹ Information gathered in interview with participant from Equal Education. January 24, 2017.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Sushmita, *supra* note 113, at 43. and Felner, *supra* note 82, at 427.

audits in Tembisa revealed discrepancies in the number of VIP latrines promised in the service provider contract and the number of existing VIP latrines.²²⁶ One of SJC's social audits in Khayelitsha also revealed similar discrepancies, demonstrating that the service provider had not provided the number of toilets stipulated in the contract.²²⁷ In another example, the participant from Planact described how despite Spring Valley residents' engagement in participatory planning with the government, a municipality-hired contractor incorrectly installed the pipes and sewage system in the informal settlement.²²⁸ Government officials hired a new contractor, but the installation of a sanitation system remains delayed due a lack of funds to restart the project.²²⁹

After gathering information in the surveys, social audits, and budget analysis, both SJC and Equal Education used educational workshops to inform the communities on the right to sanitation and how to hold the government accountable for the realization of this right.²³⁰ While SERI does not utilize social audits and budget analysis as a strategy, it does use educational workshops as a strategy to educate communities how to hold the government accountable for the realization of the right to sanitation.²³¹ The representative from SERI emphasized the importance of strengthening community leadership through education on rights advocacy for successfully holding government accountable through the use of additional mechanisms.²³²

²²⁶ Information gathered in interview with participant from Planact. February 6, 2017.

²²⁷ Social Justice Coalition. "Report of the Khayelitsha 'Mshengu' Toilet Social Audit." *Social Justice Coalition*, 2013.

²²⁸ Information gathered in interview with participant from Planact. February 6, 2017.

²²⁹ Ibid.

²³⁰ Information gathered in interviews with participants from Equal Education and SJC. January 24, 2017 to January 26, 2017.

²³¹ Information gathered in interview with participant from SERI. March 20, 2017.

²³² Ibid.

As most participants indicated that informational and symbolic mechanisms are partially successful in realizing the right to sanitation, the interviews revealed that the participating organizations are most likely to use strategies within these two mechanism categories before employing strategies within other mechanism categories. For informational and symbolic mechanisms to be partially successful, the organizations described the importance of community members engaging in the process, indicating that community support formed during the utilization of these initial mechanisms contributed to the outcome of other mechanisms.²³³ The organizations, however, had difficulty obtaining community support at times. During apartheid, access to adequate sanitation declined for individuals relocated under the *Group Areas Act*.²³⁴ As social transformation in South Africa has been slow in post-apartheid years and racial inequalities continue to exist, many South Africans have accepted existing injustices.²³⁵ Section 27 and Equal Education both indicated that when employing these mechanisms, they had to help communities overcome an acceptance of inequality in access to basic services before community members supported organizational initiatives.²³⁶

Cooperative Mechanisms

In an attempt to facilitate relationships between community members and the government, all of the participating organizations utilized strategies within the cooperative mechanism category of the MAPs framework. As previously discussed, protests and marches often led to meetings with government officials. Additionally,

²³³ Information gathered from interviews with participants from eight organizations. January 23, 2017 to March 20, 2017.

²³⁴ *Group Areas Act*, (1950). See Section II.B for additional historical context on sanitation conditions during apartheid.

²³⁵ Fambrice Tambeh Endoh. "Democratic constitutionalism in post-apartheid South Africa: The interim constitution revisited." *Africa Review* 7.1, (2015): 73.

²³⁶ Information gathered in interviews with participants from Equal Education and Section 27. January 24, 2017.

media attention, information acquired by the public through the media, and social audits often led to cooperative discussions with municipalities. The strategies within the cooperative mechanism category also demonstrate some of the outcomes of strategies categorized as informational mechanisms. The organizations categorized the following strategies as cooperative mechanisms: writing to government, meeting with government officials to discuss how to realize the right to sanitation for residents of informal settlements, or settling disagreements before proceeding to court.²³⁷

As part of SJC's budget campaign, SJC encouraged individuals to write submissions to the government.²³⁸ The movement helped facilitate 500 submissions to the municipality in which individuals described their experience with sanitation in informal settlements, and their individual analysis of the budget. While this strategy allowed for community participation, the municipality counted all of the letters as only one submission.²³⁹ Rather than following the protocol of responding to each submission individually, the municipality sent the same response to each person.²⁴⁰ When individuals from middle-income and high-income regions wrote submissions to the municipality, they received individual responses, addressing the issue at hand.²⁴¹

Planact, AbM, Equal Education, Section 27, SERI, and IBP attempt to facilitate meetings with government and community members whenever possible.²⁴² The participants indicated that the organizations often use the meetings to present on what

²³⁷ Information gathered from interviews with participants from eight organizations. January 23, 2017 to March 20, 2017.

²³⁸ Information gathered from interview with participant from SJC. January 26, 2017.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Information gathered in interviews with participants from Planact, AbM, Equal Education, Section 27, SERI, and IBP. January 23, 2017 to February 6, 2017.

measures the government would have to take to realize the right to sanitation.²⁴³ These meetings with the government allow for community members to participate in planning.²⁴⁴ The government, however, often fails to implement solutions established during the meetings, or disagrees with the communities' ideas on how to realize the right to sanitation.²⁴⁵ As a result, the meetings often do not lead to the creation of solutions. For instance, the participant from AbM indicated that the individuals residing in the informal settlements represented by AbM do not wish to relocate.²⁴⁶ The local government, however, prefers to relocate residents of informal settlements to subsidized housing with sanitation facilities.²⁴⁷ In the meetings, the government claimed the land in Durban's informal settlements is not conducive for the installation of water pipes and sewer systems.²⁴⁸ AbM does not agree with this assessment because many residents have connected illegally to pipes already installed in the ground for nearby homes.²⁴⁹

Planact also attempted to meet with government officials to discuss the findings from its social audits and budget analysis.²⁵⁰ In Spring Valley, meeting with the government led to an investment of 3.5 million rand to install water pumps and sewer systems throughout the settlement.²⁵¹ Alternatively, after the social audits of the VIP latrines in the informal settlements of Tembisa, the municipality often did not appear at the meetings to discuss the findings.²⁵² The participant from Planact explained that in

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ Information gathered in interview with participant from AbM. January 23, 2017.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Information gathered from interview with participant from Planact. February 6, 2017.

²⁵¹ Ibid.

²⁵² Ibid.

Tembisa, government meetings often fail due to poor intergovernmental relations.²⁵³ The province invested money to install electricity throughout the informal settlements, but the municipality continually attempts to evict the residents.²⁵⁴ As stipulated in Schedule 4 of the constitution and in the *Water Services Act*, municipalities are responsible for planning and allocating resources for access to sanitation in informal settlements.²⁵⁵ The municipality's failure to fulfill this planning role demonstrates a hesitation to formalize informal settlements, as it may set a standard or raise expectations for other informal settlements. It also raises the question as why the province has not held the municipality responsible for refusing to comply with domestic law. Poor intergovernmental relations highlight an existing political tension, demonstrating one of the tradeoffs civil society organizations experience when employing cooperative mechanisms.

The participant from AbM depicted another component of political tension in describing the hostile relationship between AbM members and the ANC party.²⁵⁶ Similarly, the participant from SJC described how the organization's resistance to partnering with organizations aligned with the ANC party resulted in disputes between government officials and SJC members at meetings with the municipality.²⁵⁷ The participant from Equal Education also expressed that the impartial movement has experienced pressure to show alignment with the ANC party from the Department of Education.²⁵⁸

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ *Constitution of the Republic of South Africa*, (1996). and *Water Services Act*, (1997).

²⁵⁶ Information gathered in interview with participant from AbM. January 23, 2017.

²⁵⁷ Information gathered in interview with participant from SJC. January 26, 2017.

²⁵⁸ Information gathered in interview with participant from Equal Education. January 24, 2017.

Overall, the participants indicated that the limitations of cooperative mechanisms were similar to the limitations of informational and symbolic mechanisms. While these strategies partially realized the right to sanitation for informal settlements, this use of strategies often resulted in false promises from the government, or a refusal to discuss improvements to sanitation access due to the political context. Meetings with the government that included budget analysis or review from the onset of engagement appeared to be more successful in realizing the right to sanitation. Furthermore, the political context surrounding informal settlement communities and the organizations representing the communities often impacted the success or failure of cooperative mechanisms.²⁵⁹

Power-based Mechanisms

Many of the participating organizations utilized strategies within the power-based mechanism category, the use of influential actors or media attention to pressure government to respect human rights, mainly through partnerships.²⁶⁰ Foremost, the organizations often partnered with international organizations or legal centers to facilitate specific strategies.²⁶¹ When Planact, SJC, and Equal Education utilized budget analysis as an informational strategy, they all partnered with IBP for resources and support.²⁶² The participant from IBP explained that they partnered with these organizations to “support the reputation” of these organizations.²⁶³ As IBP is recognized internationally, it aided

²⁵⁹ Tissington, *supra* note 30, at 15.

²⁶⁰ Haglund and Stryker, *supra* note 93, at 6.

²⁶¹ Information gathered in interviews with participants from Planact, SJC, Equal Education and Section 27. January 24, 2017 to February 6, 2017.

²⁶² Information gathered in interview with participant from IBP. January 26, 2017.

²⁶³ *Ibid.*

SJC, Equal Education, and Planact in their requests to see budgets and meet with government officials following budget analysis.²⁶⁴

In a different type of partnership, Planact, SJC, Equal Education, and Section 27 partnered with pro bono legal centers for additional resources.²⁶⁵ In addition to IBP, Planact partnered with pro bono lawyers when requesting budget material from the government.²⁶⁶ SJC, Equal Education, and Section 27 partnered with legal centers for advice as well as for help with making final requests to government officials before proceeding with litigation.²⁶⁷ The government's willingness to provide the organizations with information when requested via partnerships confirms Madlingozi's analysis of the impact of power-based strategies.²⁶⁸ However, Madlingozi's analysis emphasizes the importance of partnering with political parties whereas the organizations' use of power-based strategies emphasizes the importance of partnering with international organizations and law centers. Government officials often responded to these requests, as they feared the implicit threat of litigation, demonstrating the power in organizations partnering with influential actors.

The organizations' attempts to attract media attention also may be categorized as power-based mechanism. As discussed in the informational and symbolic mechanisms section, media attention often forced government officials to issue some type of response to civil society's appeals for government accountability, especially when politicians feared negative attention leading up to elections. Media attention, however, may not

²⁶⁴ Ibid.

²⁶⁵ Information gathered in interviews with participants from Planact, SJC, Equal Education and Section 27. January 24, 2017 to February 6, 2017.

²⁶⁶ Information gathered from interview with participant from Planact. February 6, 2017.

²⁶⁷ Information gathered in interviews with participants from Planact, SJC, Equal Education and Section 27. January 24, 2017 to February 6, 2017.

²⁶⁸ Madlingozi 94.

result in the organizations' intended response. Furthermore, while the organizations emphasized the importance of media attention to pressure government to improve sanitation access, the government response to the media's coverage of the civil society organizations' campaigns demonstrates how this strategy may be a barrier to achieving positive results.²⁶⁹ For instance, in an attempt to attract positive media attention, especially leading up to elections, the government may respond with immediate and short-term solutions to generate positive media coverage of the ANC party, while ignoring demands for more long-term measures and yet appearing to be acting on the issue.²⁷⁰ Additionally, in response to widespread media coverage, some international actors have offered somewhat controversial assistance to informal settlement communities. For instance, the participant from AbM indicated that in response to the media coverage of its protests in 2013, the government of the Netherlands supplied mobile toilets to select informal settlements in Durban.²⁷¹ While this form of aid provided temporary relief for some communities, it failed to hold the South African government accountable for realizing the right to sanitation for residents of informal settlements.

Legal Mechanisms

SJC, Equal Education, Section 27, SERI, and CALS utilized strategies within the legal mechanism category, using litigation to hold the government accountable for the realization of the right to sanitation or rights related to the process of pursuing this goal.²⁷² The participants from SERI and CALS often utilize this strategy, indicating that

²⁶⁹ Robins, *supra* note 4, at 107.

²⁷⁰ Ibid.

²⁷¹ Information gathered in interview with participant from AbM. January 23, 2017.

²⁷² Information gathered in interviews with participants from SJC, Equal Education, Section 27, CALS, and SERI. January 23, 2017 to March 20, 2017.

litigation sets a precedent and creates jurisprudence on the right to sanitation.²⁷³ The participants from SERI and CALS indicated that when communities approach their organizations for representation, the communities previously have attempted to hold the government accountable for the realization of human rights through the use of other strategies, without success or with limited success, rendering litigation a necessary strategy to pursue as a last resort.²⁷⁴

For instance, the participant from SERI explained how litigation contributed in helping the residents of the Slovo Park informal settlement in Johannesburg hold the government accountable for the realization of the right to sanitation.²⁷⁵ The High Court ordered the municipality to upgrade the informal settlement through a specific program involving participatory planning with the community.²⁷⁶ Currently, the municipality is still in the process of formalizing the settlement.²⁷⁷ SERI plans to monitor the municipality's compliance with the court's decision to ensure implementation of the realization of the rights to all basic services.²⁷⁸

CALS focuses on rights to housing and water in litigation against government to further the realization of the right to sanitation.²⁷⁹ CALS' work demonstrates the courts ability to hold the government accountable for the realization of sanitation when it is framed as a right to housing or water, not specifically as a unique right to sanitation.²⁸⁰ For instance, CALS represented the residents of Lebowakgomo, a township in Limpopo,

²⁷³ Information gathered in interviews with participants from CALS and SERI. January 23, 2017 and March 20, 2017.

²⁷⁴ Ibid.

²⁷⁵ Information gathered in interview with participant from SERI. March 20, 2017.

²⁷⁶ *Melani and the Further Residents of Slovo Park Informal Settlement v City of Johannesburg and Others*, (2016). *Socio-Economic Rights Institute*.

²⁷⁷ Ibid.

²⁷⁸ Information gathered in interview with participant from SERI. March 20, 2017.

²⁷⁹ Information gathered in interviews with participant from CALS. January 23, 2017.

²⁸⁰ Ibid.

in a right to water case.²⁸¹ Many of the residents in this community had flushing toilets before water shut-offs.²⁸² Without access to water, residents were forced to dig holes to find a place to relieve themselves.²⁸³ This had a significant impact on community members with disabilities who were physically unable to dig holes or leave their homes.²⁸⁴ Thus, CALS advocated for government accountability for the realization for the right to water to realize both the rights to water and sanitation.²⁸⁵ This case successfully resulted in a short-term solution via water tanks supplied by the government, demonstrating the potential of framing a right in a particular way to garner public support, when engaging with the court system.²⁸⁶ CALS intends to return to court to hold the government accountable for a long-term solution in 2017.²⁸⁷

The participants from Planact, SJC, Equal Education, and Section 27 indicated that their organizations preferred to utilize litigation only after they have attempted to hold the government accountable via other mechanisms, emphasizing that litigation was a necessary step once government was no longer willing to cooperate outside of court.²⁸⁸ This emphasis raises the questions as to whether or not government would be more or less likely to cooperate with civil organizations post-litigation. Although the participants did not comment on the relationships with government post-litigation, the participants identified other tradeoffs of litigation, noting its timeliness, high cost, and failure to

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Haglund and Stryker, *supra* note 93, at 6.

²⁸⁷ Information gathered in interviews with participant from CALS. January 23, 2017.

²⁸⁸ Information gathered in interviews with participants from SJC, Equal Education, and Section 27. January 26, 2017 to February 6, 2017.

achieve tangible results in comparison to other strategies.²⁸⁹ As Gauri and Brinks discuss in their theory on compliance after litigation, various stages and factors impact the extent of State compliance with a court decision.²⁹⁰ Therefore, litigation may lead to a positive court decision, but not necessarily State compliance with the decision.²⁹¹ The organizations limited use of litigation to realize the right to sanitation confirms Dugard's assessment of the limitations of litigation due to civil society organizations' limited resources.²⁹² These participants also indicated that their organizations use litigation when other strategies have been exhausted because court decisions have the ability to mandate long-term infrastructure solutions, and create a record of government accountability.²⁹³

SJC, Equal Education, and Section 27 remain in the early stages of litigation, and therefore, the participants were unable to comment on the success of legal strategies in realizing the right to sanitation.²⁹⁴ SJC has decided to litigate over three specific issues. It is challenging *The Gathering Act* in response to arrests over a right to sanitation protest in 2013.²⁹⁵ It also is alleging violations of the right to equality against the City of Cape Town over its discriminatory practice of responding to submissions based on individuals' socio-economic status.²⁹⁶ Additionally, with the assistance of the Ndifuna Ukwazi law center, SJC currently is attempting to hold the City of Cape Town accountable for violations of constitutional rights for residents of two specific informal settlements.²⁹⁷

²⁸⁹ Ibid.

²⁹⁰ Gauri and Brinks, *supra* note 78, at 4.

²⁹¹ Ibid.

²⁹² Dugard, *supra* note 119, at 972.

²⁹³ Information gathered in interviews with participants from SJC, Equal Education, and Section 27. January 26, 2017 to February 6, 2017.

²⁹⁴ Ibid.

²⁹⁵ Information gathered in interview with participant from SJC. January 26, 2017.

²⁹⁶ Ibid.

²⁹⁷ Social Justice Coalition & Others v City of Cape Town, High Court of South Africa, (2016). *Ndifuna Ukwazi*: 2

SJC requests the installation of permanent infrastructure to realize the right to sanitation in these communities as reparations for the violations.²⁹⁸ The participant from SJC indicated that while the organization had to pursue litigation in these matters, it still plans to utilize other advocacy strategies once the court issues a decision on the case.²⁹⁹ Equal Education is considering litigation to hold the department of education in the Eastern Cape accountable for missed deadlines to improve school infrastructure, including sanitation facilities.³⁰⁰ Finally, Section 27 remains involved in an ongoing case against the Department of Education on behalf of a family in Limpopo whose son died after falling into an eroded pit latrine at school.³⁰¹

In a different legal role, CALS and Section 27 both entered as amicus on Equal Education's case against the Board of Education, providing the court non-partisan advice on the issues in the case.³⁰² Although the case settled out of court, the participants from both organizations described how their organizations researched and framed the right to sanitation in their submissions to the court.³⁰³ Both organizations framed the right to sanitation as rights to privacy and security.³⁰⁴ They also included the gender implications of inadequate sanitation in their advice.³⁰⁵ The organizations framed the right to sanitation in specific ways to appeal to the government's interpretation of the constitution.³⁰⁶

²⁹⁸ Ibid.

²⁹⁹ Information gathered in interview with participant from SJC. January 26, 2017.

³⁰⁰ Information gathered in interview with participant from Equal Education. January 24, 2017.

³⁰¹ Information gathered in interview with participant from Section 27. January 24, 2017.

³⁰² Information gathered in interviews with participant from CALS and Section 27. January 23, 2017 to January 24, 2017.

³⁰³ Ibid.

³⁰⁴ Ibid.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

D.) Key Findings

As Haglund and Aggarwal's MAPs framework suggests, in addition to the relationships and strategies, other factors also influence social transformation.³⁰⁷ Haglund and Aggarwal refer to these factors as conditions "...that facilitate (or hinder) norm adoption and the establishment of rights-promoting practices."³⁰⁸ These conditions, referred to as action-formation mechanisms in the framework, often impact civil society's attempts to hold the government accountable for the realization of the right to sanitation in South Africa.³⁰⁹ As exemplified in this analysis, these conditions may be external factors as well as inherent tensions. The analysis of civil society's use of strategies points to several external factors that impact the realization of the right to sanitation in informal settlements. The external factors that often "hinder" the success of civil society's use of strategies include the political context surrounding right to sanitation campaigns, government relationships with service providers, the role of international aid, and media coverage.³¹⁰ The external factors that often "facilitate" the success of civil society's use of strategies include community support for right to sanitation campaigns, media coverage, election campaigns, and access to resources and support from external actors.

The empirical evidence also revealed that inherent tensions impact civil society's ability to hold government accountable for the realization of the right to sanitation. As Haglund and Aggarwal note in the MAPs framework, conditions that impact "...the establishment of rights-promoting practices" include disagreements between civil society and government over how objectives in rights realization should be achieved and how to

³⁰⁷ Haglund and Aggarwal, *supra* note 93, at 497.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Information gathered in interviews with eight participants from organizations. January 23, 2017 to March 20, 2017.

define success of these objectives.³¹¹ The empirical evidence revealed that often an external event prompts a short-term response from government to realize the right to sanitation in informal settlements with a temporary solution. While this response provides short-term relief for communities, it often creates additional challenges for civil society organizations in their efforts to achieve long-term relief.

Thus, the civil society organizations employ additional mechanisms to hold the government accountable for the realization of the right to sanitation. Most of the civil society organizations attempted cooperative approaches, such as meeting with the government, before attempting adversarial approaches, such as litigation.³¹² The empirical evidence indicates that civil society organizations struggle to find a balance between these two approaches. As discussed in section II.A, the civil society organizations are holding the government accountable to achieve government action to realize the right to sanitation.³¹³ Article 2 of the ICESCR requires state parties to progressively realize the rights in the covenant to the maximum of their available resources.³¹⁴ Additionally, state parties are required not only to respect and protect the rights in the covenant but also fulfill the rights.³¹⁵ Therefore, government needs to plan and allocate resources to realize the right to sanitation for residents of informal settlements. The civil society organizations attempted both cooperative approaches and adversarial approaches in attempts to achieve this type of government action.

³¹¹ Haglund and Aggarwal, *supra* 93, at 497-499.

³¹² Information gathered in interviews with participants from the eight participating civil society organizations. January 23, 2017 to March 20, 2017.

³¹³ *Ibid.*

³¹⁴ *International Covenant on Economic, Social, and Cultural Rights*, (1976).

³¹⁵ Blyberg and Hofbauer, *supra* note 24, at 88.

Cooperative approaches often establish amicable relationships with government officials, and lead to meetings. However, these relationships and meetings often only provide false promises from government. One trend revealed in this thesis' empirical analysis is that cooperative strategies achieved some success only when civil society as right-holders pointed to how the government should fulfill the right to sanitation. Civil society was unable to achieve its objectives when it assumed that if it merely drew attention to shortcomings, the government would fulfill its human rights obligations. The power of data combined with its ability to demonstrate what steps the government needs to take to fulfill the right to sanitation, rather than only point to shortcomings, creates a partnership-approach to working with the government. Thus, while cooperative approaches proved to be partially successful in realizing the right to sanitation in informal settlements, the question remains: is the South African government truly being accountable for its human rights obligations if it relies on civil society to plan and reallocate budgets? For instance, both Planact and SJC saw partial success in realizing the right to sanitation when engaging in participatory planning with government through a combination of budget analysis and meetings.³¹⁶ These organizations conducted social audits of sanitation conditions and analyzed the allocation of resources in the budget for sanitation.³¹⁷ Then, the organizations met with government officials to explain what steps the government needed to take to realize the right to sanitation for residents of informal settlements.

As discussed in section III.C, the organizations had various levels of success in realizing the right to sanitation through this approach. Their differing levels of success,

³¹⁶ Information gathered in interviews with participants from Planact and SJC. January 26, 2017 and February 6, 2017.

³¹⁷ Ibid.

however, revealed that cooperative approaches appeared to be more successful when the objectives of civil society and government aligned. It also revealed that civil society's attempts to engage with government actors at an early stage are more likely to result in participatory planning. In the case of Planact in Spring Valley, both actors wanted long-term and permanent development to realize the right to sanitation.³¹⁸ Conversely, in the case of SJC in Khayelitsha, the government continued to increase and improve temporary sanitation facilities, rather than create long-term permanent access to sanitation for the community.³¹⁹

Civil society organizations often attempted adversarial approaches when the cooperative approaches failed to hold the government accountable. While adversarial approaches may create a record of government human rights responsibilities, and prescribe solutions, they often do not lead to government action to fulfill the realization of rights. In the examples provided by the participants, court judgments were often limited in its requirements of the government and/or government often fails to comply with court decision. For instance, when discussing the outcome of litigation on behalf of the informal settlement residents in Limpopo, the participant from CALS indicated that the court ruling instituted a short-term solution of water tanks, rather than a long-term solution of infrastructure development.³²⁰

Additionally, adversarial approaches often require civil society to return to cooperative approaches post-litigation to monitor compliance with a court decision. For instance, when SERI used litigation to hold the government accountable for realizing the right to sanitation in Slovo Park, the court issued a decision mandating formalization of

³¹⁸ Information gathered in interview with participant from Planact. February 6, 2017.

³¹⁹ Information gathered in interview with participant from SJC. January 26, 2017.

³²⁰ Information gathered in interview with participant from CALS. January 24, 2017.

the informal settlement through a specific plan to realize the rights to all basic services.³²¹

The participant from SERI, however, indicated that the municipality remained in the process of upgrading Slovo Park, and therefore, SERI employs strategies, such as meetings with government officials, to monitor compliance with the court decision.³²²

While the participant from SERI did not comment on the current status of its relationship with government officials, this example demonstrates civil society's return to cooperative approaches after the use of an adversarial approach. Similarly, the participant from SJC indicated that the organization plans to use cooperative approaches once a decision on its case against the City of Cape Town is issued.³²³

V. Conclusion

Haglund and Aggarwal's MAPs framework indicates that analysis of accountability relationships, the use of mechanisms, and external conditions has the potential to reveal the pathways necessary for rights realization. Therefore, this thesis attempted to analyze these components in civil society's attempts to hold the government accountable for the realization of the right to sanitation in informal settlements. This thesis identified two types of accountability relationships existing among civil society and government in attempts to demand accountability for the realization of the right to sanitation in South Africa. It demonstrated that domestic organizations, rather than international organizations, are the primary actors in employing advocacy strategies for this objective in South Africa. The empirical evidence also demonstrated the tradeoffs and benefits of the strategies, indicating that civil society organizations may choose to utilize specific strategies based on these elements. While the empirical evidence did not

³²¹ Information gathered in interview with participant from SERI. March 20, 2017.

³²² Ibid.

³²³ Information gathered in interview with participant from SJC. January 26, 2017.

reveal one specific strategy or combination of strategies to be most effective, it did reveal patterns about the success of the use of certain strategies as well as the impact of external factors. Most significantly, the empirical evidence demonstrated that civil society organizations are attempting to balance the use of cooperative approaches and adversarial approaches to achieve their objective of demanding government accountability.

The ICESCR requires state parties to progressively realize rights to the maximum of their available resources. South Africa's domestic laws and policies reaffirm the obligations of the ICESCR. Furthermore, the *Water Services Act* emphasizes that municipalities are responsible for planning and budgeting to create sanitation access for residents of informal settlements. When the representatives of the civil society organizations described the organizations' visions of successful realization of the right to sanitation in informal settlements, they described government action to fulfill the right to sanitation. Their use of strategies, however, often resulted in false promises or court decisions, rather than plans and resource allocation to realize the right to sanitation. Thus, the pathway for civil society organizations to hold the government accountable for the realization of the right to sanitation in informal settlements may be found in determining the appropriate balance between cooperative and adversarial approaches.

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